

### **Remarks**

The applicant has presented amendments to the claims which, when coupled with the following remarks address each and every issue raised by the Office and places the claims, or confirms that the claims are, in condition for allowance. The applicant respectfully requests the Office to enter these amendments in conjunction with a further examination of the application.

### ***Response to Arguments***

The Office states that the arguments filed on August 30, 2007 are not persuasive. The applicant takes note however, that the rejections previously presented under 35 USC § 102 for still pending claims 4, 6-7, 9 and 11 apparently have been overcome and as such, the arguments presented were indeed apparently persuasive to overcome, at a minimum, these rejections.

### ***Specification***

The Office alleges that the amendment filed on August 30, 2007 is objected to under 35 U.S.C 132(a) as introducing new matter into the disclosure. More specifically, the Office argues that the claim limitations requiring funds extraction due to payment performance requirements is not supported in the specification and that this is new matter. The applicant respectfully disagrees with the Office on this point.

Although the Office was not specific with regards to this objection, the applicant assumes that the Office is referring to the language in claim 12 which states:

a decision engine operable to qualify a customer for an account  
based at least in part on said formation data ~~and~~, said account  
option data and gaining access to the direct deposit account and to  
monitor payment performance activity of a customer and cause a

**fund extraction from the customer's direct deposit account if  
the customer fails to meet the established payment  
performance requirements;**

The added limitations to this claim are shown as being underlined to clearly identify what was amended in claim 12.

The applicant states that the element that states “cause a fund extraction from the customer’s direct deposit account if the customer fails to meet the established payment performance requirements” is indeed supported in the specification.

The Office is directed to the following passages that appear in the original specification:

The account management component also operates to control or alter the behavior or characteristics of an account based at least in part on the outputs of various risk models. In operation, the account manager receives a dump of all accounts and account activity at some period of time, such as during the night. This data is referred to as aggregation data. **The data obtained in the dump is examined to identify trends in behaviors.** The trends may result in certain actions taking place, for instance, a missed payment may trigger a dialer to be scheduled for the customer or may result in a lock down of further authorizations. **Other actions based on the aggregation data can also be performed and the present invention anticipates such actions. Thus, the dumped data is used as the basis for actions that can be taken to limit any, or any further loss.** *Page 6 lines 3-12.*

The account service provider gives the customer a certain number of days during which to pay off the borrowed amount. **If the customer fails to make such payment, the account service provider can deduct the borrowed amount, along with any**

**assessed fee from the direct deposit account of the customer.**

*Page 4 line 33 to page 5 line 4.*

As can clearly be seen in the above-cited references, the element “cause a fund extraction from the customer’s direct deposit account” is met in that the account service provider gives the customer a certain number of days to pay off the borrowed amount (“performance requirements”) and if the customer does not meet this performance requirement by failing to make such payment, the account service provider can deduct (“cause a fund extraction”) the borrowed amount, along with any assessed fee from the direct deposit account of the customer.

Thus, the applicant respectfully submits that this amendment to claim 12 does not add new matter in that it is clearly supported in the specification.

***Claim Rejections – 35 USC § 112***

**Claim 12** is rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. It is assumed that this rejection is directly tied to the Office’s objection to the specification. If this is not the case the applicant requests clarification from the Office. However, based on this assumption, the applicant respectfully submits that the argument presented above with regards to the Office’s objection to the specification clearly establish that the claim limitations added into claim 12 are clearly supported in the specification in a manner that establishes that the inventor was in possession of the claimed invention, in such a way as to reasonably convey to one skilled in the relevant art, at the time the application was filed.

**Claim 3** is rejected under 35 USC 112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter. More specifically, the Office states that the phrase “qualifying the particular customer” renders the claim indefinite because it

is unclear what is being measured, how it is being measured and how the value is being ranked or applied. The applicant has further amended claim 3, however, the applicant asserts that such amendment is not necessary to overcome this rejection but is merely added for clarification.

The applicant respectfully submits that as stated in the specification, those skilled in the art are very familiar with the process of qualifying a customer for an account. More specifically, the applicant submits that the funded financial account has particular characteristics (as supported by lines 27-31 of page 11). Various information about the customer is examined to determine if the customer qualifies for such an account. The applicant submits that this element of claim 3, as presented herein is clear in that it measures a risk and underwriting criteria that must be met by the customer in order to qualify the customer for the account. Such techniques are well known in the art and are typical for providing financial accounts to customers. The particular tests being applied are not being claimed, but rather, simply the step of qualifying the customer. As such, the applicant respectfully submits that this rejection of claim 3 has been overcome. Further, the rejections as applied to claims 4 and 5 are thus also overcome.

**Claim 12** is continued to be addressed by the Office but, it is not clear as to the basis of this rejection. The opening statement indicated that claims 3-11 were rejected under 35 USC 112, second paragraph, and as such, it is assumed that claims 6-11 were rejected as being based on rejected base claims and, that the Office actually meant to include claim 12 in this rejection.

Moving forward based on this assumption, the Office indicates that it is not clear how the initial deposit being obtained by gaining access to a direct deposit account actual provides a first deposit into an account. The applicant is not fully appreciative of the Office's confusion but, offers the following explanation to help clarify the issue. Claim 12 actually describes two accounts: a source account and a created account. The source account is the customer's direct

deposit account. The created account is the checkless checking account being created for the customer. To establish the checkless checking account, among other things, funds are withdrawn from the customer's direct deposit account and then placed into the checkless checking account. Claim 12 has been amended to further clarify this point.

Further, the Office again reiterates its position regarding the indefiniteness of claim 12 again quoting the element of "cause a fund extraction from the customer's direct deposit account if the customer fails to meet the established payment performance requirements". The Office indicates it is unclear what types of payment performance requirements exist on the customer. The applicant points the Office to the specification again as outlined above. One example is if the customer misses a payment. However, other criteria may also be established and the specific criteria is not relied upon in this claim, but rather that there is a performance requirement, and if this is not met the funds are extracted.

Finally, the Office states that the phrase "access to the direct deposit account" renders the claim indefinite because it is unclear what type of access the applicant is claiming. The applicant states that it is well known in the art that access to an account refers to the ability to draw funds from the account and that the claim language is completely clear on this point.

As such, the applicant respectfully submits that the rejection of claim 12 has been traversed and that claim 12 is in condition for allowance.

#### *Claim Rejections – 35 USC § 103*

The applicant takes position against the Office's statement that the case now stands with admitted prior art. The August 30, 2007 amendments rendered the Office's statements as moot and thus, were not specifically addressed but rather, were summarily dismissed by the position

taken by the applicant in submitting the amendments, and stating clearly that the Office's positions were rendered moot. As such, the applicant further states that the prior art statements of the Office are not admitted, but rather have been traversed by amendment.

The Office has rejected claims 3, 4, 6, 7, 9 and 11 under 35 USC 103(a) as being unpatentable over Risafi et al. in view of United States Patent Application Publication Number 20030074277 to Foutz.

With regards to claim 3, the applicant further asserts the positions taken in the August 30, 2007 response. Further, the applicants have amended claim 3 to indicate that the qualification is also based on a risk analysis performed on the received information and underwriting criteria. The applicant asserts that this element is not described in the cited references and as such, claim 3, as well as claims depending there from are in condition for allowance.

Similar amendments have been made to each of the remaining independent claims, claims 5, 12 and 16. As such, the applicants respectfully submit that these amendments overcome all of the art relied upon to date, and that these claims, as well as the claims depending there from are in condition for allowance. These amendments render the remainder of the Office's positions as moot and as such, they are not further addressed in this response but, it should be clear that by not specifically addressing these moot positions, the applicant is not admitting them as being accurate but rather, in the interest of not flooding the prosecution history with moot arguments, they are being omitted.

As such, the applicant respectfully submits that each of the rejections presented by the Office have been traversed or rendered moot by amendments, and that claims 3-19 are in condition for allowance. Such action is respectfully requested of the Office.

### **Conclusion**

Applicant respectfully submits that the currently pending claims are in condition for allowance and respectfully requests that the case be processed to issuance. If the Office has any questions or if there are any actions that can be handled through an Examiner's Amendment, the applicant requests the Office to contact the attorney of record using the below-provided contact information.

Respectfully submitted,

/Gregory Scott Smith/

By: \_\_\_\_\_  
Gregory Scott Smith  
Reg. No. 40,819  
Attorney for Applicant

Smith Frohwein Tempel Greenlee Blaha LLC  
Two Ravinia Drive, Suite 700  
Atlanta, Georgia 30346  
(770) 804-9070